## October 26, 2010



# California First-Year Law Students' Examination

### Answer all 4 questions.

Time allotted: 4 hours

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and fact upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other.

Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles. Instead, try to demonstrate your proficiency in using and applying them.

If your answer contains only a statement of your conclusions, you will receive little credit. State fully the reasons that support your conclusions, and discuss all points thoroughly.

Your answer should be complete, but you should not volunteer information or discuss legal doctrines which are not pertinent to the solution of the problem.

You should answer the questions according to legal theories and principles of general application.

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Pam drove to Diner, a local restaurant, at about 5:00 p.m. When she got out of her car in Diner's parking lot, she was robbed at gunpoint by an unknown assailant, who took her purse and her cellular phone. Pam later discovered that she was not the first victim of a crime in the Diner parking lot. In the past year, two other customers had been the victims of auto burglaries, which occurred while they were dining inside the restaurant. Diner put two video cameras in the parking lot, but did not hire security guards to patrol the parking lot.

As the robber began to flee, Pam wanted to get help and decided to run into Diner to use one of its telephones. She hoped that by calling "911" quickly, the robber could be apprehended and her property returned. As Pam ran across the parking lot she tripped in a large pothole and fell and broke her arm. Diner had not repaired the pothole, although customers had been complaining about it for weeks. All of the complaints were from customers who had not spotted the pothole while driving, hit it, and worried that their tires would be knocked out of alignment. The pothole was readily visible to pedestrians. Had Pam not been so panicked by the robbery, she likely would have noticed the problem and avoided it.

When Pam entered the restaurant, she asked a waiter, Wayne, to let her use Diner's phone to call "911." Wayne refused to let her use the telephone. He said Diner's policy limited use of the telephones to employees making business-related calls and strictly prohibited calls by customers. In fact, Pam later found out that Wayne had misstated the policy, which included an exception for emergencies. When Wayne refused, another customer promptly called "911" for Pam, using his own cellular phone. The paramedics and police arrived shortly thereafter, enabling Pam to get immediate treatment. However, the robber was never apprehended and Pam never recovered her purse or her cellular phone.

Pam is suing Diner. Under what theory or theories might Pam bring an action against Diner, what defenses, if any, might Diner assert, and what is the likelihood Pam will be successful in obtaining damages for:

- 1) The loss of her purse, her cellular phone, and her emotional distress as a result of the robbery? Discuss.
- 2) Her broken arm? Discuss.
- 3) Exacerbation of her injuries due to Wayne's refusal to allow her to use Diner's phone to call "911"? Discuss.

Data is a data processing company. Data's business depends on the operation of several large computers. Data decided to employ an outside company to provide computer maintenance and service. Data's president and other corporate officers met with the president of Reboot to discuss a computer service agreement. The next day Reboot faxed its standard form contract to Data. The contract reads as follows:

Client hereby agrees to purchase computer maintenance services from Reboot at a cost of \$2,000 per month. Reboot hereby agrees to provide up to ten hours of service per month, with additional hours payable at \$300 per hour. Reboot further agrees that it will provide same-day service in response to every service request. This agreement shall expire one year from the date on which it is made. In the event that Client fails to make a payment required under this agreement, 80 per cent of the entire remaining balance under the agreement shall become immediately due and payable.

Data signed and returned the contract and made the first \$2,000 payment. During the first month of the agreement, Data made two service requests. Both requests were received by Reboot at 9:00 a.m. In each case Reboot personnel arrived at Data's offices at noon and quickly fixed the problem. In both instances Data's president complained about the delay but was told it was an unusually busy day. After the second service call, Data sent a fax to Reboot stating that Data would make no further payments under the contract. (Data later hired a different service company.) Reboot then sent a letter to Data demanding \$17,600, representing 80 per cent of the remaining balance. When Data refused to pay, Reboot filed a lawsuit.

The president of Data claims that during the initial meeting with Reboot's president, she told him that it was absolutely crucial that Reboot respond to service requests within one hour. She says that Reboot's president told the group, "I understand. If you sign up with us, I promise we'll be there within an hour."

Under what theory or theories might Reboot bring a lawsuit against Data, what defense(s), if any, can Data assert, and which party is likely to prevail? Discuss.

Alan, age 18, decided that as a graduation prank he would set fire to the athletics equipment shed at the high school. Late on a Saturday night, Alan, who had consumed a few beers, told his friend, Brian, about his plan and asked Brian to drive him to the school. "That's an idiotic idea," Brian told Alan. "What if somebody's in there? Somebody might get hurt." Alan replied that he didn't think it was likely anyone would be there late at night. Brian said, "It's not my business why you want a ride. I'll give you a lift, and what you do while you're there is your problem."

Brian drove Alan to the school and parked a hundred feet from the athletics shed. The shed was made of wood. Alan had brought a single pack of paper matches, but was unable to set the shed aflame. Brian, watching from a distance, beckoned to Alan and offered him his cigarette lighter, saying, "Get this over with so we can get out of here." Alan returned to the shed with the lighter and was able to get the shed to smolder, but not catch fire. After several tries, he gave up. Alan and Brian left the school. Because of his intoxication, Alan did not hear Carl, a local homeless man, snoring inside the shed.

Unbeknownst to Alan or Brian, the shed was still smoldering. Two hours later, high winds caused the remaining sparks to burst into flame; the resulting fire destroyed the athletics shed. Carl was still asleep in the shed and was killed by the fire.

What crimes, if any, have Alan and Brian committed? What defenses can each assert, and will they be successful? Discuss.

Delicious, Inc. manufactures jelly-filled doughnuts which are sold in grocery stores. Delicious doughnuts are packaged in a paper wrapper, which is recyclable, but which costs more than plastic wrappers. On the front of the wrapper is printed, "Delicious Doughnuts," and on the back is printed nutritional information.

Adrian, Cara, and Ed each purchased Delicious doughnuts at a local grocery store. The doughnut that Adrian purchased had a thumbtack inside. Not knowing this, Adrian threw the doughnut at his roommate, Bob, during a food fight at breakfast. Bob suffered a serious injury to his eye when the thumbtack scratched it.

Cara heated her doughnut in a microwave oven on a high temperature setting for several minutes. When she removed the doughnut from the microwave, it was warm to the touch. When she bit into it, however, the inside of her mouth was badly burned by the jelly filling which, because it was liquid, had been heated to a much higher temperature than the pastry on the outside.

Ed packed his doughnut in a suitcase to take on a business trip to make an important sales presentation for his company. When he opened the suitcase at his destination he found that the doughnut had leaked jelly through the paper wrapper and stained all of the clothes in the suitcase. Ed didn't have time to buy new clothes and so wore the stained clothes to the sales presentation. He didn't make the sale.

Under what theory or theories can Adrian, Bob, Cara, and Ed bring claims against Delicious, what defenses, if any, might Delicious assert, and what damages, if any, are likely to be awarded in a lawsuit brought by:

- (1) Adrian against Delicious? Discuss.
- (2) Bob against Delicious? Discuss.
- (3) Cara against Delicious? Discuss.
- (4) Ed against Delicious? Discuss.